

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JEFFERY JUST,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:18-CV-424 NAB
)	
CITY OF ST. LOUIS, MISSOURI, et al.,)	
)	
Defendants.)	

**PLAINTIFF’S MOTION FOR TAXATION OF COSTS OF SERVICE TO BE ASSESSED
AGAINST DEFENDANTS AND FOR ATTORNEY’S FEES**

COMES NOW Plaintiff Jeffery Just (“Plaintiff”), by and through his attorney, and for his Motion for Taxation of Costs of Service to be Assessed Against Defendants City of St. Louis, Missouri, Defendant Nellie Kuykendall and Defendant Eric Henry (collectively the “Defendants”) and for Attorney’s Fees and respectfully states to this Honorable Court the following:

1. On Saturday, March 17, 2018, Plaintiff’s undersigned counsel filed the above-captioned case.
2. Also on Saturday, March 17, 2018, Plaintiff’s undersigned counsel mailed to Defendant City of St. Louis, Missouri¹, Defendant Nellie Kuykendall and Defendant Eric Henry² the Notice of Lawsuit and Request to Waive Service of a Summons (*See* Doc. #1-3, Doc. #1-4 and Doc. #1-5), two (2) copies of the Waiver of the Service of Summons (*See Plaintiffs’ Exhibit 1*

¹ Defendant City of St. Louis, Missouri’s Notice of Lawsuit and Request to Waive Service of a Summons, 2 copies of the Waiver and SASE were properly mailed to: Mayor Lyda Krewson, 1200 Market St Rm 200, St. Louis, MO 63103.

² Defendant Nellie Kuykendall and Defendant Eric Henry’s Notice of Lawsuit and Request to Waive Service of a Summons, 2 copies of the Waiver and SASE were properly mailed to their place of employment, the St. Louis City Police Department: Nellie Kuykendall, c/o St. Louis City Police Dept., 1915 Olive St., St. Louis, MO 63103; Eric Henry, c/o St. Louis City Police Dept., 1915 Olive St., St. Louis, MO 63103. Prior to mailing, the undersigned called the St. Louis City Police Department to confirm that Defendant Kuykendall and Defendant Henry were currently still employed.

attached hereto), a copy of the Complaint filed in this case (Doc. #1) and a self-addressed, stamped envelope.

3. The Waivers of the Service of Summons were due to be executed by Defendants and returned to the undersigned by April 16, 2018.

4. The Waivers of Service were not executed by Defendants or delivered to the undersigned by April 16, 2018.

5. On April 16, 2018, after the undersigned's office mail was delivered by the U.S.P.S., the undersigned filed a "Memorandum" and "Request for Summons" for all Defendants, notifying this Honorable Court that, "...all Defendants have failed to return waivers of service." (*See* Doc. #3).

6. On April 18, 2018, Plaintiff filed his Proof of Service with respect to Defendant City of St. Louis, Missouri. (*See* Doc. #6).

7. On April 18, 2018, Plaintiff filed his Proof of Service with respect to Defendant Nellie Kuykendall. (*See* Doc. #7).

8. On April 18, 2018, Plaintiff filed his Proof of Service with respect to Defendant Eric Henry. (*See* Doc. #8).

9. The cost of service on Defendant City of St. Louis, Missouri was \$50.00. (*See Plaintiff's Exhibit 1 attached hereto*).

10. The cost of service on Defendant Nellie Kuykendall was \$50.00. (*See Plaintiff's Exhibit 2 attached hereto*).

11. The cost of service on Defendant Eric Henry was \$50.00. (*See Plaintiff's Exhibit 3 attached hereto*).

12. Today, April 30, 2018, Counsel Myles D. McDonnell entered his appearance on behalf of all Defendants.

13. Rule 4(d)(2) of the Federal Rules of Civil Procedure provides that:

“If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court **must** impose on the defendant:

(A) the expenses later incurred in making service; and
(B) the reasonable expenses, including attorney’s fees, of any motion required to collect those service expenses.”

Fed.R.Civ.P. 4(d)(2). (*emphasis added*).

14. In addition to the aforementioned service costs incurred, Plaintiff has also incurred attorney’s fees as and for the preparation of this motion and memorandum in support filed concurrently herewith.

15. Specifically, the undersigned has expended 2.9 hours in the preparation and filing of this instant Motion with attached exhibits.

16. Additionally, the undersigned has expended 0.4 hours in the preparation and filing of Plaintiff’s Memorandum in Support filed concurrently herewith, which includes 0.1 hours in Westlaw research.

17. Plaintiff’s undersigned counsel makes contemporaneous records on his hours worked on this case and every case.

18. Plaintiff’s undersigned counsel records his time in tenths of hours; that is, every 6 minutes is recorded as 1/10 of an hour.

19. Plaintiff’s undersigned counsel:

(a) is an attorney licensed to practice law in the State of Missouri, State of New York, this Federal District Court for the Eastern District of Missouri, the

Federal District Court for the Southern District of Illinois, the Federal District Court for the Northern District of Indiana, the Federal District Court for the Western District of Missouri, the 2nd Circuit Court of Appeals, the 7th Circuit Court of Appeals, the 8th Circuit Court of Appeals and the Supreme Court of the United States; and

- (b) has been practicing law for over 18 years, focusing mostly on federal civil rights and criminal defense.

20. On February 27, 2015, the Honorable Judge Carol E. Jackson, now retired, then sitting in this court, in ruling on an identical motion as this motion, found the undersigned's rate at that time, \$300.00/hour, reasonable on a civil rights case. (*See Plaintiff's Exhibit 4 attached hereto*).

21. Plaintiff's undersigned counsel's current rate on civil rights cases is \$400.00/hour and the undersigned respectfully states that this fee is reasonable.

22. Thus, Plaintiff seeks service costs in the amount of \$150.00 and attorney's fees in the amount of \$1,360.00 as for 3.4 hours expended.

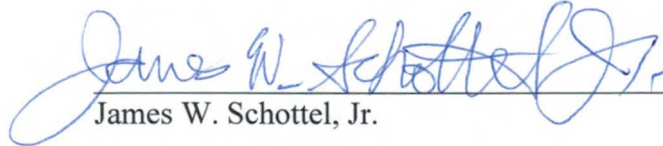
23. On November 1, 2016, the Honorable Magistrate Judge Patricia L. Cohen found in the civil rights case of *S.M., et al. vs. Lincoln County, et al.* that an hourly rate of \$450.00/hour was reasonable for fellow civil rights attorney, W. Bevis Schock, who has been practicing law for 30 years; Judge Cohen further found that an hourly rate of \$350.00/hour was reasonable for another fellow civil rights attorney, Hugh Eastwood, who has been practicing law for 9 years. (*See Plaintiff's Exhibit 5 attached hereto*).

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Honorable Court to grant his Motion for Taxation of Costs of Service to be Assessed Against Defendants City

of St. Louis, Missouri, Defendant Nellie Kuykendall and Defendant Eric Henry and for Attorney's Fees and for such other relief this Court deems just and proper under the circumstances.

STATE OF MISSOURI)
)
CITY OF ST. LOUIS) SS.


JAMES W. SCHOTTEL, JR. being duly sworn, on his solemn oath deposes and certifies that the statements set forth in this instrument are true and correct according to his best knowledge and belief.


James W. Schottel, Jr.

Subscribed and sworn to before me this 30th day of April, 2018.



(Notarial Seal or Stamp)



Notary Public

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

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Attorney for Plaintiff
Jeffery Just

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Myles D. McDonnell
McDonnellm@stlouis-mo.gov

Attorney for Defendants
City of St. Louis, Missouri
Nellie Kuykendall
Eric Henry

s/James W. Schottel, Jr.